Supreme Court, U.S.
FILED
DEC 6 1991
OFFICE OF THE CLERK

No. 91-452

In the Supreme Court of the United States

OCTOBER TERM, 1991

LENORA B. FULANI, ET AL., PETITIONERS

v.

NICHOLAS F. BRADY,
SECRETARY OF THE TREASURY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether an independent candidate for the presidency in 1988, her campaign committee and a supporter have standing to sue the Secretary of the Treasury and the Commissioner of Internal Revenue for declaratory and injunctive relief to revoke the tax exemption of the Commission on Presidential Debates.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-26a) is reported at 935 F.2d 1324. The order of the district court dismissing the complaint for lack of subject matter jurisdiction (Pet. App. 27a-41a) is reported at 729 F. Supp. 158.

JURISDICTION

The judgment of the court of appeals was entered June 14, 1991. The petition for a writ of certiorari was filed on September 11, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioners are Dr. Lenora B. Fulani (the New Alliance Party's nominee for the presidency in 1988), Lenora B. Fulani's Committee for Fair Elections (Fulani's campaign committee) and Barbara Taylor (a registered voter and Fulani supporter) (Pet. App. 3a, 32a n.5). Fulani's name was on the 1988 ballot in all 50 States and in the District of Columbia, and she qualified for Federal Election Commission (FEC) presidential primary matching funds (*id.* at 3a).

Respondent Commission on Presidential Debates (the CPD) was incorporated in 1987 by the Democratic National Committee and by the Republican National Committee to sponsor presidential and vice-presidential debates. The CPD obtained a tax exemption under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C.),[1] which enabled it to sponsor campaign debates under FEC regulations (Pet. App. 2a, 27a, 28a). See 11 C.F.R. 110.13(a)(1).

When Fulani learned that the CPD would be sponsoring presidential debates, she contacted the CPD to apply to participate in the debates. The CPD informed her that its policy was to invite "any candidate with a realistic chance of being elected to the Presidency or Vice-Presidency, whatever that candidate's party-affiliation" (Pet. App. 3a). In determin-

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[1] Section 501(c)(3) provides an exemption from federal income tax for an entity "organized and operated exclusively for religious, charitable * * * or educational purposes, * * * no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation * * *, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."

ing the realistic nature of a candidate's chances, the CPD looked to factors such as the candidate's ballot listings; professional opinions of the media, campaign managers, and political scientists; column inches of news coverage; and findings of national pollsters. Applying these criteria, the CPD concluded that Fulani did not have a realistic chance of being elected President and, accordingly, informed her by letter dated September 19, 1988, that she would not be invited to participate in the 1988 presidential debates (*id.* at 3a, 29a).

2. The following day, petitioners brought this suit in the United States District Court for the District of Columbia against the Secretary of the Treasury, the Commissioner of Internal Revenue (the federal respondents) and the CPD.[2] The complaint asserted that Fulani "has a realistic chance of determin[in]g the outcome of the presidential election by attracting away from candidate Dukakis sufficient numbers of voters to swing the Elector[al] College votes of one or more key states to candidate Bush" (C.A. App. A18-A19). It further alleged that "[b]ut for the exclusion of Dr. Fulani's candidacy from serious coverage by the national media and her exclusion from nationally reported and televised debates such as the * * * presidential primary debates, Dr. Fulani would have significantly greater name recognition and support for her campaign across the nation" (*id.* at A19). The complaint asserted (*id.* at A22) that the CPD's exclusion of Fulani from the debate violated

[2] Petitioners subsequently withdrew their claims against the CPD by a notice of dismissal filed under Rule 41(a)(1) of the Federal Rules of Civil Procedure. After being dismissed as a defendant, the CPD sought and was granted leave to intervene (C.A. App. A254 n.3).

the prohibition in Section 501(c)(3) against "participat[ing] in, or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of [(or in opposition to)] any candidate for public office."

Petitioners sought (i) a declaration that both the "partisan" activities of the CPD and the "inaction" of the federal respondents in failing to revoke the CPD's tax exemption violated the First and Fifth Amendments to the Constitution and the Internal Revenue Code; (ii) an injunction ordering the federal respondents to revoke the CPD's tax exemption, to assess and collect all taxes thereby due, and to notify contributors that donations to the CPD are not tax-deductible, and (iii) a temporary restraining order and preliminary and permanent injunctive relief enjoining the CPD from holding any 1988 presidential debate to which Fulani was not invited (C.A. App. A29-A31).

3. On September 23, 1988, the district court denied petitioners' request for a temporary restraining order and preliminary injunction against the staging of the debate then scheduled for September 25, 1988 (C.A. App. A190). The court of appeals summarily affirmed that order on September 24, 1988 (*id.* at A249-A250). On October 7, 1988, petitioners filed an application to enjoin the staging of a presidential debate scheduled to be held on October 13, 1988. On October 12, 1988, the district court denied this motion, noting that "[t]he relief requested would clearly disrupt the presidential campaign" (*id.* at A246-A247).

On February 2, 1990, the district court granted the government's motion to dismiss the complaint for lack of Article III standing (Pet. App. 27a-40a). The

court construed the complaint as alleging that Fulani's exclusion from the presidential debates had deprived her of "wide-spread media and public attention" (*id.* at 33a) and had put her at a "competitive" (*id.* at 34a) disadvantage vis-a-vis the major party candidates. The court concluded that those assertions failed to set forth a cognizable injury, reasoning that the major party candidates would enjoy a decisive competitive advantage over Fulani in terms of media exposure and recognition whether or not the debates were held (*id.* at 35a).

The court also concluded (Pet. App. 36a-40a) that any loss of public attention suffered by Fulani as a result of CPD's denial of her request to appear in the debates could not be fairly traced to the federal respondents or redressed by the requested equitable relief. The court reasoned that if the federal respondents were ordered to withdraw CPD's tax exemption, rendering it ineligible to sponsor the debates, there might not be an eligible organization willing to sponsor the debates, or to invite Fulani to participate (*id.* at 39a). Even if Fulani were invited to a debate, many other third-party candidates might seek the same privilege, resulting in withdrawal of the major-party candidates from the debate, refusal of the television networks to broadcast it, and deterioration of the debate into a "political free-for-all" having little or no value in terms of candidate recognition or voter education (*id.* at 35a). Fulani's ability to obtain relief therefore hinged on the "independent" decisions of persons and entities not party to this case or subject to the court's remedial power (*id.* at 38a). Since the court could not "order the media to cover the debates or the major party candidates to participate in the debates" (*id.* at 39a), Fulani "might still

be denied the media coverage and political legitimacy which she seeks" (*ibid.*) even if CPD's tax-exempt status were revoked. The causal connection between the injury she alleged and the federal respondents' administration of the tax laws was too weak to provide petitioners with standing to sue.

4. A divided panel of the court of appeals affirmed (Pet. App. 1a-26a). The majority noted at the outset that "the statutory scheme created by Congress is inconsistent with, if not preclusive of, third party litigation of tax-exempt status" (*id.* at 5a-6a), because Section 7428(b)(1) of the Internal Revenue Code provides for judicial review of decisions concerning an organization's tax-exempt status only in actions brought by the affected organization itself.

The majority rejected Fulani's theory that she nonetheless had standing as a "competitor" to contest the CPD's tax exemption. The court emphasized that withdrawal of the tax exemption would not guarantee Fulani's participation in the debates because the CPD might withdraw from debate sponsorship or, alternatively, the major party candidates might decline to participate in a debate to which Fulani had been invited (Pet. App. 10a). The majority concluded that "while the IRS's decision to provide the CPD with tax-exempt status is a cause of Fulani's claimed injury, it is merely one in a chain of independent causal factors necessary to achieve this injury" (*ibid.*). The court held that, "given the number of causal factors significant to Fulani's alleged injury, * * * the claim lacks sufficient redressability to warrant standing" (*ibid.*).[3]

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[3] Judge Mikva dissented (Pet. App. 15a-26a). He concluded that "[t]he presence of intervening actors in a chain of events that leads from the alleged violation to the alleged

ARGUMENT

1. a. The court of appeals correctly rejected petitioners' claim of standing to challenge the tax exemption of a third party. In order to maintain an action in federal court, a plaintiff must "allege[] such a personal stake in the outcome of the controversy as to warrant *his* invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf." *Warth* v. *Seldin*, 422 U.S. 490, 498-499 (1975). The "core component" of standing, derived directly from the "cases" or "controversies" requirement of Article III of the Constitution, requires the plaintiff to "allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen* v. *Wright*, 468 U.S. 737, 750-751 (1984). That injury cannot be an "[a]bstract" one (*O'Shea* v. *Littleton*, 414 U.S. 488, 494 (1974)); it must be "distinct and palpable" (*Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91, 100 (1979)). The standing doctrine embraces certain prudential limitations on the exercise of federal jurisdiction, including "the general prohibition on a litigant's raising another

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harm will not necessarily defeat standing" (*id.* at 20a). In his view, Fulani's injury was traceable to the tax exemption because the CPD's "sponsorship of presidential debates depends on the challenged tax exemption" (*id.* at 21a). Judge Mikva believed that Fulani's injury was also redressable, even if withdrawal of the tax exemption would not result in Fulani's participation in a televised debate with the major-party candidates. He reasoned that, even if the CPD "included Fulani in a debate ignored by the press or * * * decided against holding a debate altogether" (*id.* at 23a), "the unique publicity boost that Bush and Dukakis would otherwise receive, as well as Fulani's correlative loss of political legitimacy" (*ibid.*), would be eliminated.

person's legal rights" and "the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches." *Allen* v. *Wright*, 468 U.S. at 751.

This Court has emphasized that these principles do not permit plaintiffs to invoke the federal courts merely to litigate a claim that the government is failing to enforce its laws—in particular, laws governing tax exemptions—against a third party. In *Allen* v. *Wright*, the Court observed that suits challenging the government's conduct of a particular program "are rarely if ever appropriate for federal-court adjudication" (468 U.S. at 760) and held that the parents of black public school children lacked standing to sue the Secretary and the Commissioner to challenge the tax-exempt status of allegedly discriminatory public schools. The Court explained that the complaint that the government was not adequately enforcing the tax laws against a third party is not sufficient to permit the suit: "[A]ssertion of a right to a particular kind of Government conduct, which the Government has violated by acting differently, cannot alone satisfy the requirements of Art. III without draining those requirements of meaning." (*id.* at 754, quoting *Valley Forge Christian College* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 483 (1982)). See also *Schlesinger* v. *Reservists Committee to Stop the War*, 418 U.S. 208, 217 (1974); *United States* v. *Richardson*, 418 U.S. 166 (1974); *Ex parte Levitt*, 302 U.S. 633 (1937).[4]

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[4] The Court concluded in *Allen* v. *Wright* that the plaintiffs had not suffered any concrete injury from the government's failure to revoke allegedly invalid tax exemptions. The court held that the claim that blacks had suffered a "stigmatic in-

In *Allen* v. *Wright*, the Court therefore rejected the attempt to base standing on the assertion that the grant of tax exemptions to private schools impaired the desegregation of the public schools and diminished the plaintiffs' ability to educate their children in an integrated school. The Court held that the line of causation between the government's enforcement of the tax laws and public school desegregation was too weak; it was sheer speculation whether the withdrawal of tax exemptions would alter the racial balance in the public schools attended by the plaintiffs' children. 468 U.S. at 756-758.

In *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976), this Court similarly found that the plaintiffs lacked standing to litigate whether the government was properly enforcing the tax laws against other persons. A group of indigent plaintiffs had sued Treasury officials to challenge a Revenue Ruling that allowed nonprofit hospitals to qualify for tax exemption under Section 501(c)(3) even if they provided indigents with no more than emergency room services. Although the Court acknowledged that some of the plaintiffs had been injured by the hospitals' relatively restrictive policy regarding services to indigents (*see* 426 U.S. at 40-41), the Court held that this injury did not confer standing to sue the government because it was "purely speculative" whether the alleged injury could fairly be traced to the government's tax enforcement ruling "or instead result[s] from decisions made by the hospitals without regard to the tax implications" (*id.* at 42-43).

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jury, or denigration" (468 U.S. at 754) as a result of government recognition of tax exemptions for segregated schools was too abstract to be judicially cognizable.

b. The principles embodied in those decisions establish that petitioners lack standing to challenge the tax exemption of the Commission on Presidential Debates. Petitioners' allegation (Pet. 12) that the federal respondents' alleged refusal to enforce Section 501(c)(3) against the CPD has resulted in the "unconstitutional[] use[] [of] governmental power to miseducate the American voters" is a complaint that the government is not properly enforcing the law. It is well established that such attempts to enlist the Judicial Branch to intervene concerning the tax status accorded by Treasury officials to a third party are not cognizable by the federal courts. See *Allen* v. *Wright*, 468 U.S. at 754, 756-758.

Petitioners' argument (Pet. 17-19) that the judgment below conflicts with this Court's recognition of "voter standing" in *Baker* v. *Carr*, 369 U.S. 186 (1962), is clearly incorrect. There is no allegation that Fulani's exclusion from the debates resulted in an infringement of any of petitioners' voting rights. See *In re United States Catholic Conference*, 885 F.2d 1020, 1028 (2d Cir. 1989), cert. denied, 495 U.S. 918 (1990). No ballot boxes have been stuffed or district lines gerrymandered, nor is there any allegation that Fulani has been denied ballot access on discriminatory grounds. Compare *Baker* v. *Carr*, *supra*; *Anderson* v. *Celebrezze*, 460 U.S. 780 (1983); *Illinois State Board of Elections* v. *Socialist Workers Party*, 440 U.S. 173 (1979). In this voter context, the essence of a claim of cognizable injury at the hands of the federal respondents must be that the electoral fortunes of Fulani's candidacy are being harmed by the CPD's enjoyment of a tax exemption and that the harm would be remedied if the exemption were revoked. As was the case in *Eastern Kentucky*, 426

U.S. at 42-43, however, it is purely speculative whether the withdrawal of the CPD's tax-exempt status would lead to any change in Fulani's media standing or performance at the polls.[5] Fulani's ability to participate in a televised debate with the major-party candidates depends upon far more than the CPD's willingness to issue her an invitation. As the courts below concluded (Pet. App. 10a, 37a), the reluctance of the other candidates to take part in a debate with her, or the refusal of the networks to broadcast such a debate, are independent factors that could prevent Fulani from realizing her goal. The success of her candidacy hinges fundamentally on the "independent action[s] of * * * third part[ies] not before the court" (*Eastern Kentucky*, 426 U.S. at

[5] Petitioners' pertinent contention is that they are "injured by government conduct that has tilted the electoral playing field unfairly" (Pet. 18). This is not a challenge based on their status as voters, but is a complaint that an advantage granted to one competitor automatically handicaps the others. A threshold prerequisite to standing, as a competitor or otherwise, is that the plaintiff himself must have suffered an "injury in fact" from the conduct that he challenges. See, *e.g.*, *Association of Data Processing Organizations, Inc.* v. *Camp*, 397 U.S. 150, 152 (1970). A claim that petitioners "suffer[] in some indefinite way in common" (*Massachusetts* v. *Mellon*, 262 U.S. 447, 488 (1923)) with every voter or participant in the political process who does not share the views allegedly benefited by the challenged conduct is too diffuse and abstract to support standing. Petitioners' theory lacks a limiting principle because it could be invoked by any spectator who supports a given side in public debate. *In re United States Catholic Conference*, 885 F.2d at 1030. As a result, an allegation that the tax-exempt status of a charitable organization creates an "unfair competitive atmosphere" does not allege an injury in fact. See *American Society of Travel Agents, Inc.* v. *Blumenthal*, 566 F.2d 145, 149 (D.C. Cir. 1977), cert. denied, 435 U.S. 947 (1978).

42). The "endless number of diverse factors potentially contributing to the outcome" of elections "forecloses any reliable conclusion that voter support of a candidate is 'fairly traceable' to a particular event" (*Winpisinger* v. *Watson*, 628 F.2d 133, 139 (D.C. Cir.), cert. denied, 446 U.S. 929 (1980)).

2. a. There is no merit to petitioners' contention (Pet. 15) that the decision below conflicts with *Fulani* v. *Hogsett*, 917 F.2d 1028 (7th Cir. 1990), cert. denied, 111 S. Ct. 2799 (1991). In *Hogsett*, the Seventh Circuit held that Fulani had standing to challenge alleged irregularities in the certification by Indiana officials of Democratic and Republican candiates for presidential electors (but held on the merits that her claim was barred by laches). 917 F.2d at 1030-1031. In contrast with the situation here, the casual connection between Fulani's injury and the actions of the officials in *Hogsett* was direct. The *Hogsett* court found that the injury in that case was "fairly traceable to the action of the Indiana officials who allowed the Democrats and Republicans on the ballot" (*id.* at 1030) and that "[a] grant of damages would redress the increased outlay of campaign money to meet the competition, and declaratory relief would prevent future violations of the Indiana certification law" (*ibid.*). It was apparent in *Hogsett* that the differential ballot-access enjoyed by the major-party electors flowed directly from the allegedly irregular certification of their candidacies by the Indiana officials and that the injury was redressable by their removal from the ballot and damages. Here, by contrast, it is purely speculative whether the CPD's decision to deny Fulani an invitation to the debates can be traced to the "inaction" of the federal respondents or, instead, results from a choice made by the CPD

without regard to the tax implications. As a result, Fulani's exclusion from the debates cannot be considered to be "fairly traceable" to the federal respondents. It is equally conjectural whether the exercise of the court's remedial powers to order a revocation of the CPD's tax-exempt status would lead to Fulani's participation in a televised debate with the major-party candidates, because that event depends upon the actions of numerous persons not before the court, including the candidates themselves and the broadcast networks.

b. Contrary to petitioners' further contention (Pet. 13-15), the decision in this case can also be reconciled with that of the Second Circuit in *Fulani v. League of Women Voters Education Fund*, 882 F.2d 621 (1989). In *League of Women Voters*, Fulani sought to participate in League-sponsored nationally televised primary debates held separately for candidates for the Democratic and Republican presidential nominations. When the League denied Fulani's requests to participate in those debates, she sought to compel the Treasury to revoke the League's tax exemption.

A divided panel of the Second Circuit held that Fulani had standing to challenge the League's tax exemption, although the panel unanimously concluded on the merits that the League had committed no violation of Section 501(c)(3) by excluding Fulani from the debates.[9] 882 F.2d at 629. In ruling that the complaint asserted a cognizable injury, the majority stated that "the loss of competitive advantage flowing

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[9] The ruling on the merits, of course, foreclosed any opportunity to seek en banc or certiorari consideration of the panel majority's ruling on standing.

from the League's exclusion of Fulani from the national debates constitutes sufficient 'injury' for standing purposes, because such loss palpably impaired Fulani's ability to compete on an equal footing with other significant presidential candidates." *Id.* at 626. The majority believed that there was a sufficient causal nexus between that injury and the challenged conduct of the Secretary and the Commissioner because FEC regulations required the League to have a tax exemption to sponsor the debates. *Id.* at 627-628. The majority therefore regarded the injury as redressable because revocation of the League's exemption "at least would have prevented the League's sponsorship of the debates." *Id.* at 628.

Judge Cardamone filed an opinion concurring in the judgment, but disagreeing with the majority's ruling that Fulani had standing to maintain the action. 882 F.2d at 630-633. In his view, Fulani had failed to assert the requisite causal link between her injury and the challenged conduct of the Treasury officials because she had made no allegation or showing that the conferral of that exemption had "caused" or "provided an incentive for" the League to exclude her from the debates held under its auspices. *Id.* at 631. Judge Cardamone also differed with the majority's conclusion that Fulani's injury was likely to be redressed by withdrawal of the exemption. If, as appeared probable, the League would discontinue hosting the debates instead of inviting Fulani to join, "Fulani would still be denied the media exposure she seeks." *Id.* at 632. While the major-party candidates in that event would also lose the free television time earmarked for the debates, Judge Cardamone reasoned that "the playing field" would remain "tilted"

against Fulani despite the court's intervention because she, unlike the Republican and Democratic nominees, depended on participation in the debates to clothe her with political "legitimacy." *Ibid.* He concluded that the "credibility" and enhanced voter acceptance that Fulani sought to achieve by debating head-to-head on national television with better-known candidates "falls beyond the scope of relief that we have the power to grant." *Ibid.*

We believe that petitioners lack standing for the reasons stated by the court of appeals below, as well as by the concurring judge in *League of Women Voters*. One who bases her claim to standing upon her status as a candidate for elective office must allege and show that the challenged actions of the Treasury officials have harmed her candidacy in a concrete way, and, correspondingly, that the harm would be removed by an exercise of the court's remedial power. A litigant does not have standing to complain of a perceived advantage enjoyed by someone else merely because the two are adversaries in a political contest. Rather, the plaintiff must show that loss or lack of voter support is fairly traceable to the challenged conduct of the defendants, an especially heavy burden to carry in light of "[t]he endless number of diverse factors potentially contributing to the outcome of [elections]." *Winpisinger* v. *Watson*, 628 F.2d at 139. The Second Circuit majority concluded that revocation of the League's exemption would restore Fulani's ability to compete on an equal footing with the other candidates by preventing the League from sponsoring the debates. 882 F.2d at 628. But nowhere did the majority identify how cancellation of the debates would have a material effect on the

success of her candidacy or on the outcome of the election.[7]

While the reasoning of the court of appeals in the present case appears to conflict with that of the Second Circuit in *League of Women Voters*, the two decisions are not irreconcilable. A claim that Fulani suffered injuries that are traceable to respondents—and that are redressable by relief directed to respondents—is even more attenuated in the context of a final, general election than in the context of a party primary. When, as the CPD correctly concluded in this case (Pet. App. 3a), a candidate has no realistic chance of participating meaningfully in the outcome of a general election, the rationale of *League of Women Voters*—that permitting the candidate to participate in debates would restore her ability to compete on an equal footing (882 F.2d at 626, 628)—could not be invoked. Because the rationale of *League of Women Voters* thus would not apply in the factual context of this case, the two decisions are not squarely in conflict.

3. This Court has admonished "against recognizing standing in a case brought, not to enforce specific legal obligations whose violation works a direct harm, but to seek a restructuring of the apparatus established by the Executive Branch to fulfill its legal duties" (*Allen* v. *Wright*, 468 U.S. at 761). See also *Valley Forge*, 454 U.S. at 474-475. As in *Allen* v. *Wright*, petitioners seek to compel the Executive

[7] As Judge Cardamone aptly noted, Fulani's better-known rivals did not need the free television exposure provided by the debates to acquire voter recognition; they had it already. If the debates were eliminated, Fulani's candidacy would be no better off by any realistic measure—she "would still be denied the media exposure she seeks." 882 F.2d at 632.

Branch to review the activities of a tax-exempt organization in order to determine whether it continues to qualify for exemption. That is an enforcement matter generally committed to the authority of the Secretary. To allow petitioners to maintain such a suit would place the courts in the position of assuming the "amorphous [task of] general supervision of the operations of government" (*United States* v. *Richardson*, 418 U.S. at 192 (Powell, J., concurring)), and acting as "virtually continuing monitors of the wisdom and soundness of Executive action" (*Laird* v. *Tatum*, 408 U.S. 1, 15 (1972)). A suit to compel an agency to undertake a specific enforcement inquiry is particularly unsuitable for judicial resolution because "an agency decision not to enforce often involves a complicated balancing of a number of factors which are peculiarly within its own expertise." *Heckler* v. *Chaney*, 470 U.S. 821, 831 (1985).[5]

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[5] The administration of the tax laws presents a particularly strong context for rigorous application of the foregoing principles. A claim such as that of petitioners intrudes into a detailed structure erected by Congress to govern enforcement of the tax laws. Congress has delegated "the administration and enforcement of" the tax laws exclusively to the Secretary and the Commissioner (26 U.S.C. 7801(a)), including the power to "prescribe all needful rules and regulations for the enforcement of" those laws (26 U.S.C. 7805(a)). Congress has reserved to itself the task of overseeing the enforcement of the revenue laws by creating a Joint Committee on Taxation to investigate the administration, operation, and effects of the tax system. 26 U.S.C. 8001-8023. At the same time, Congress has established precisely defined channels for the adjudication of tax disputes initiated by private parties—proceedings in the Tax Court to redetermine deficiencies (26 U.S.C. 6212, 6213), refund suits in the district courts or the Claims Court (26 U.S.C. 6532, 7422; 28 U.S.C. 1346, 1491), and, in limited circumstances, declaratory judgment actions.

4. The court of appeals noted (Pet. App. 5a) that, "since both the presidential debates and the elections are now over, it is arguable that we can provide no legal redress to the parties in the case before us." The court did not find it necessary to address the mootness issue because it concluded that Fulani lacked standing to maintain this suit. Since Fulani did not allege that she intended to run for office in the future, and did not seek to represent similarly situated candidates, she alleged no continuing stake in the CPD's enjoyment of its tax exemption, and her claims for relief are now moot. See *Los Angeles* v. *Lyons*, 461 U.S. 95 (1983); *Golden* v. *Zwickler*, 394 U.S. 103, 108 (1969); *Brockington* v. *Rhodes*, 396 U.S. 41 (1969). Even if (as we dispute) the standing requirement of Article III had been satisfied at the outset of this litigation, since there is no allegation that Fulani "will again be subjected" to the conduct she seeks to challenge (*Los Angeles* v. *Lyons*, 461 U.S. at 109), and since only declaratory and injunc-

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e.g., by an organization seeking recognition of its own tax-exempt status under Section 501(c)(3) (26 U.S.C. 7428). Apart from these avenues of relief, Congress has precluded "any person, whether or not such person is the person against whom such tax was assessed," from maintaining a "suit for the purpose of restraining the assessment or collection of any tax" (26 U.S.C. 7421(a)), and has barred declaratory relief in all actions "with respect to Federal taxes" (28 U.S.C. 2201). This structure reflects a deliberate judgment that the vigor of the government's enforcement of the tax laws is generally not a matter for litigation instituted by private parties. In particular, Congress has determined that invocation of judicial examination of the validity of a particular organization's tax exemption is the prerogative only of the government and the organization in question, not of third parties.

tive relief have been sought, the case is now moot. *Ibid.*

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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DECEMBER 1991

☆ U. S. GOVERNMENT PRINTING OFFICE: 1991